

FILED

JUL 27 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ELIAS MALDONADO,

Defendant - Appellant.

No. 05-10227

D.C. No. CR-04-00120-HDM

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Nevada
Howard D. McKibben, District Judge, Presiding

Submitted July 24, 2006^{**}

Before: ALARCÓN, HAWKINS and THOMAS, Circuit Judges.

Elias Maldonado appeals from the 51-month sentence imposed following a guilty-plea conviction for unlawful reentry by a deported alien in violation of 8

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

U.S.C. § 1326(a). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Maldonado contends that the doctrine of constitutional avoidance requires limiting his sentence to two years, the statutory maximum under 8 U.S.C.

§ 1326(a), because he did not admit his prior conviction and it was not proven to a jury beyond a reasonable doubt. This argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224 (1998). See also *United States v. Weiland*, 420 F.3d 1062, 1079 n.16 (9th Cir. 2005) (noting that *Almendarez-Torres* is binding precedent unless and until it is explicitly overruled by the Supreme Court).

Maldonado also contends that his 51-month sentence is unreasonable because the district court refused to reduce his sentence to account for the unwarranted sentencing disparities caused by the lack of fast-track systems in some districts. This contention is foreclosed by *United States v. Marcial-Santiago*, 447 F.3d 715, 719 (9th Cir. 2006) (concluding that “the disparity between Appellants’ sentences and the sentences imposed on similarly situated defendants who are not prosecuted in fast-track districts is not unwarranted” and that, even if the disparity was unwarranted, that factor alone would not render a sentence unreasonable where the sentence was imposed within the guideline range after considering the guidelines and other Section 3353(a) factors).

AFFIRMED.